

§ 1.103(n)-2T

26 CFR Ch. I (4-1-04 Edition)

A-3: If an issue of private activity bonds causes the issuing authority's private activity bond limit to be exceeded, no portion of that issue will be treated as obligations described in section 103(a), and interest paid on the issue will be subject to Federal income taxation.

Q-4: If an issue of private activity bonds causes the issuer's private activity bond limit to be exceeded, what is the effect on previous issues of private activity bonds that met the requirements of section 103(n) when issued?

A-4: Private activity bonds issued as part of an issue that met the private activity bond limit when issued continue to meet the requirements of section 103(n) even though a subsequent issue causes the aggregate amount of private activity bonds issued by an issuing authority to exceed the authority's private activity bond limit for the calendar year.

Example. The following example illustrates the provisions of A-3 and A-4 of this § 1.103(n)-1T:

Example. The State ceiling for State Z for 1986 is \$200 million. City M, within the State, and State Z itself are authorized to issue private activity bonds. Under the allocation formula provided by the Governor of State Z, City M has a private activity bond limit of \$50 million; the balance of the State ceiling is allocated to State Z. On June 1, 1986, City M issues a \$75 activity bonds. On September 1, 1986, State Z issues a \$150 million issue of private activity bonds. Based on these facts, the obligations of City M do not meet the requirements of section 103(n) since the aggregate amount of private activity bonds issued by City M in 1986 exceeded its private activity bond limit for such year; thus, such obligations are not described in section 103(a). That the State Z issue caused the aggregate amount of private activity bonds issued in the State during 1986 to exceed the State ceiling does not cause such obligations to fail to meet the requirements of section 103(n).

Q-5: What is the aggregate amount of private activity bonds issued as part of an issue?

A-5: The aggregate amount of private activity bonds issued as part of an issue is the face amount of the issue.

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39316, Oct. 5, 1984]

§ 1.103(n)-2T Private activity bond defined (temporary).

Q-1: What is the definition of the term "private activity bond"?

A-1: In general, for purposes of §§ 1.103(n)-1T through 1.103(n)-6T, the term "private activity bond" means any industrial development bond or student loan bond the interest on which is exempt from tax under section 103(a) (without application of section 103(n)). See § 1.103-7(b) for the definition of the term "industrial development bond." See A-17 of this § 1.103(n)-2T for the definition of the term "student loan bond." There are five exceptions to the general definition of the term "private activity bond"; the exceptions include the exception for the Texas Veterans' Bond Program, the residential rental property exception, the exception for certain facilities described in section 103(b)(4) (C) or (D), and the refunding obligation exception. These exceptions are described in A-2 through A-16 of this § 1.103(n)-2T. In addition, the term "private activity bond" does not include any issue of obligations if there was an inducement resolution (or other comparable preliminary approval) for the project before June 19, 1984, and the issue for that project is issued before January 1, 1985. See A-2 of § 1.103(n)-1T.

Q-2: To which obligations does the exception for the Texas Veterans' Bond Program apply?

A-2: The term "private activity bond" does not include general obligation bonds issued under the Texas Veterans' Bond Program if the proceeds of the issue, other than an amount that is not a major portion of the proceeds, are used to make loans of up to \$20,000 for the purchase of land for purposes authorized by such program as in effect on June 19, 1984. The use of the proceeds may be established by the affidavit of the veteran receiving the loan. For purposes of this exception to the definition of the term "private activity bond," the use of more than 25 percent of the proceeds of an issue of obligations will constitute the use of a major portion of such proceeds.

Q-3: To which obligations does the residential rental property exception apply?

A-3: The term “private activity bond” does not include any obligation issued to provide projects for residential rental property (including property functionally related and subordinate to any such facility), as described in section 103(b)(4)(A) and §1.103-8(b). In addition, the term “private activity bond” does not include any housing program obligation under section 11(b) of the United States Housing Act of 1937.

Q-4: To which obligations does the exception for certain facilities described in section 103(b)(4) (C) or (D) apply?

A-4: Section 103(n)(7)(C) provides that the term “private activity bond” does not include any obligation issued as part of an issue to provide convention or trade show facilities, as described in section 103(b)(4)(C) and §1.103-8(d) (including property functionally related and subordinate to any such facilities), if the property so described is owned by, or on behalf of, a governmental unit. In addition, the term “private activity bond” does not include any obligation issued as part of an issue to provide airports, docks, wharfs, mass commuting facilities, or storage or training facilities directly related to any of the foregoing facilities, as described in section 103(b)(4)(D) and §1.103-8(e) (including property functionally related and subordinate to any such facilities), if the property so described is owned by, or on behalf of, a governmental unit. See §1.103-8(a)(3), in general, for the definition of the term “functionally related and subordinate.” For purposes of this exception to the definition of the term “private activity bond,” the term “mass commuting facilities” includes “qualified mass commuting vehicles,” as defined in section 103(b)(9), that are associated with a mass commuting facility described in §1.103-8(e)(2)(iv). Obligations issued as part of an issue to provide parking facilities, as described in section 103(b)(4)(D), are not excepted from the definition of the term “private activity bond;” however, parking facilities may be functionally related and subordinate to another facility described in section 103(b)(4) (C) or (D).

Q-5: When is property described in section 103(b)(4) (C) or (D) owned by, or on behalf of, a governmental unit?

A-5: In general, property described in section 103(b)(4) (C) or (D) will be considered to be owned by a governmental unit if a governmental unit is the owner of the property for Federal income tax purposes generally. See A-5 of §1.103(n)-3T for the definition of the term “governmental unit”. In general, property described in section 103(b)(4) (C) or (D) will be considered to be owned on behalf of a governmental unit if a constituted authority empowered to issue obligations on behalf of a governmental unit is the owner of the property for Federal income tax purposes generally. Whether the property is owned by, or on behalf of, a governmental unit will be determined on the basis of the facts and circumstances of each particular case. The fact that the governmental unit’s or constituted authority’s obligation to pay principal and interest on an obligation is limited to revenues from fees collected from users of the property provided with the proceeds of such obligation will not, in itself, cause such property to be treated as not owned by, or on behalf of, the governmental unit. In order to qualify for the exception described in section 103(n)(7)(C), the property must be owned by, or on behalf of, the governmental unit throughout the term of the issue. See A-10 of this §1.103(n)-2T with respect to the consequences of a transfer of ownership.

Q-6: Will property described in section 103(b)(4) (C) or (D) that is leased to a non-governmental entity be treated as owned by, or on behalf of, a governmental unit if the lessee is the owner of the property for Federal income tax purposes generally solely by reason of the length of the lease?

A-6: If property, or any portion thereof, is leased to a non-governmental entity and if, for Federal income tax purposes generally, the lessee is the owner of the property solely by reason of the length of the lease, then, for purposes of §§1.103(n)-1T through 1.103(n)-6T (but not for other Federal income tax purposes, such as whether payments under the lease constitute deductible rental payments), the governmental unit will be treated as the owner of the property if the lessee elects not to claim depreciation or an investment credit with respect to such

property. See A-7 of this § 1.103(n)-2T for the rules describing the method of making this election. For purposes of §§ 1.103(n)-1T through 1.103(n)-6T, the term “non-governmental entity” means a person other than a governmental unit or a constituted authority empowered to issue obligations on behalf of a governmental unit. The fact that a non-governmental entity lessee elects not to claim depreciation or an investment credit with respect to property does not, however, ensure that the property will be treated as owned by, or on behalf of a governmental unit for purposes of §§ 1.103(n)-1T through 1.103(n)-6T. Thus, for example, if the lessee is the owner of the property for Federal income tax purposes generally other than solely because of the length of the lease, the obligations issued as part of the issue are private activity bonds notwithstanding that the lessee elected not to claim depreciation or an investment credit with respect to the property.

Similarly, even if a governmental unit is the owner of property for Federal income tax purposes generally, the property will not be treated as owned by, or on behalf of, a governmental unit for purposes of §§ 1.103(n)-1T through 1.103(n)-6T if the lease under which such property is leased to a non-governmental entity provides for significant front end loading of rental accruals or payments. See A-12 of this § 1.103(n)-2T with respect to significant front end loading of rental accruals or payments.

Q-7: What must a lessee do in order to elect not to take depreciation or an investment credit with respect to property described in section 103(b)(4) (C) or (D)?

A-7: The lessee must make the election at the time the lease is executed. The election must include a description of the property with respect to which the election is being made; the name, address, and TIN of the issuing authority; the name, address, and TIN of the lessee; and the date and face amount of the issue the proceeds of which are to be used to provide the property. The election must be signed by the lessee, if a natural person, or by a duly authorized official of the lessee. The issuing authority must be provided

with a copy of the election. The issuing authority and the lessee must retain copies of the election in their respective records for the entire term of the lease. In addition, the lease, and any publicly recorded document recorded in lieu of such lease, must state that neither the lessee nor any successor in interest under the lease may claim depreciation or an investment credit with respect to such property. This election may be made with respect to property whether or not such property otherwise would be eligible for depreciation or an investment tax credit. See section 7701(a)(41) for the definition of the term “TIN”.

Q-8: Is the election not to claim depreciation or an investment credit revocable?

A-8: No, the election is irrevocable. In addition, the election is binding on all successors in interest under the lease regardless of whether the obligations remain outstanding. If a successor in interest claims depreciation or an investment credit with respect to property for which such an election has been made, such property will be considered transferred to a non-governmental entity. See A-10 of this § 1.103(n)-2T with respect to the consequences of such a transfer.

Q-9: Where obligations are issued to provide all or any portion of a facility described in section 103(b)(4) (C) or (D), must all of the property described in section 103(b)(4) (C) or (D) that is part of such facility be owned by, or on behalf of, a governmental unit in order for such obligations to qualify for the exception to the definition of the term “private activity bond” provided in section 103(n)(7)(C)?

A-9: Generally, yes. If obligations are issued to provide all or any portion of a facility described in section 103(b)(4) (C) or (D), the obligations comprising such issue will not qualify for the exception to the definition of the term “private activity bond” provided in section 103(n)(7)(C) unless all of the property described in section 103(b)(4) (C) or (D) that is part of (or functionally related and subordinate to) the facility being financed is owned by, or on behalf of, a governmental unit throughout the term of the issue. For

this purpose, the facility being financed will be construed to include the entire airport, dock, etc., under consideration and not merely the part of the facility being provided with the proceeds of the issue. For example, the term facility, when used in reference to an airport, will be considered to include all property that is part of, or included in, that airport under § 1.103-8(e)(2)(ii)(a), including all property functionally related and subordinate thereto under § 1.103-8 (a)(3) and (e)(2)(ii)(b). Thus, if the proceeds of an issue are used to provide a hangar at an airport described in section 103(b)(4)(D), that airport is considered as being financed with such issue, and if any portion of that airport, including property functionally related and subordinate thereto, is treated as owned by a non-governmental entity, that issue does not qualify for the exception of the definition of the term "private activity bond" provided in section 103(n)(7)(C).

There are three exceptions to this rule, however. First, if any property otherwise would be considered part of the facility financed and such property was not provided with proceeds of any obligation described in section 103(a), such property will not be considered part of the facility being financed.

Second, if any property otherwise would be considered part of the facility being financed and such property was part of such facility on or before October 5, 1984, such property will not be considered part of the facility being financed. For this purpose, property will be considered part of the facility on or before October 5, 1984, if any person was under a binding contract to acquire or construct such property to be a part of such facility on October 5, 1984.

Third, property will not be considered part of the facility being financed if such property (i) is land, a building, a structural component of a building, or other structure (other than tangible personal property (other than an air conditioning or heating unit)) and such property is not physically supported by, does not physically support, and is not physically connected to any property provided with the proceeds of obligations that qualify for the exception

to the definition of the term "private activity bond" provided in section 103(n)(7)(C), or (ii) is tangible personal property (other than an air conditioning or heating unit). For this purpose, contiguous parcels of land will not be considered to support, to be supported by, or to be physically connected to each other, and insignificant physical connections (such as a connection by a sidewalk) will be disregarded. For purposes of this A-9, the term "tangible personal property" shall have the meaning given to it under section 48(a)(1)(A) and § 1.48-1(c). Examples. The following examples illustrate the provisions of A-9 of this § 1.103(n)-2T:

Example (1). On January 1, 1986, Governmental Unit M issues industrial development bonds to provide an airport, as described in section 103(b)(4)(D), which will consist of land, runways, a terminal and a functionally related and subordinate hotel. The hotel will be leased to N, a non-governmental entity. The lease does not call for significant front end loading of rental accruals or payments. For Federal income tax purposes generally, M will own the entire airport except that N will be the owner of the hotel solely by reason of the length of the lease. N properly elects not to claim depreciation of an investment credit with respect to the hotel. The industrial development bonds are not private activity bonds.

Example (2). The facts are the same as in Example (1) except that N does not make the election and claims depreciation with respect to the hotel. The entire issue of industrial development bonds is treated as an issue of private activity bonds.

Example (3). The facts are the same as in Example (2) except that the hotel is provided other than with the proceeds of an obligation described in section 103(a). The issue for the remainder of the airport qualifies for the exception to the definition of the term "private activity bond" provided in section 103(n)(7)(C).

Example (4). The facts are the same as in Example (2) except that the hotel, including the hotel parking lot, the hotel grounds, and the parcel of land on which they rest, are provided with a separate issue of industrial development bonds. There are no significant connections between the hotel and the airport. The issue for the hotel is an issue of private activity bonds. The issue for the remainder of the airport qualifies for the exception to the definition of the term "private activity bonds" provided in section 103(n)(7)(C).

Example (5). The facts are the same as Example (4) except that the hotel is constructed upon land provided with the proceeds of the issue used to provide the remainder of the airport. Both issues are treated as issues of private activity bonds.

Example (6). On June 30, 1983, construction began on the City NN airport, which consists of land, runways, a terminal, and hangars. Corporation XX (a non-governmental entity) owns for Federal income tax purposes generally several of the hangars, which it financed with obligations described in section 103(a) issued on June 30, 1983. On March 1, 1985, at a time when XX still owns the hangars, City NN issues an issue of obligations described in section 103(b)(4)(D) to enlarge the terminal at the City NN airport. City NN will own the addition to the terminal for Federal income tax purposes generally. The obligations comprising the March 1, 1985, issue will not be private activity bonds.

Q-10: What are the consequences if a governmental unit ceases to be treated as owning property described in section 103(b)(4) (C) or (D) where the property was provided by obligations that were not private activity bonds on the date of issue due to the exception provided in section 103(n)(7)(C)?

A-10: The obligations outstanding on the date such ownership ceases are private activity bonds and are treated as if they are the last private activity bonds issued by the issuer in the calendar year in which the transfer of ownership occurs. Thus, if the aggregate amount of bonds issued pursuant to such issue, when added to the aggregate amount of the other private activity bonds actually issued or treated as issued under this A-10 by the issuer during such year and the amount of any carryforward elections made during the year, exceeds the issuer's private activity bond limit for such year, the obligations are not described in section 103(a) as of the date on which transfer of ownership occurs; if such obligations do not comply with the requirements of section 103(n), the obligations will be treated as not described in section 103(a) as of the date such ownership ceases. However, if on the date of issue the issuer intended to transfer ownership of such property to a non-governmental entity during the term of the issue, then the obligations are treated as the last private activity bonds actually issued or treated as issued under this A-10 by the issuer

during the year in which such obligations were actually issued; if such obligations do not comply with the requirements of section 103(n), the obligations will be treated as not described in section 103(a) as of the date of issue. The exception to the definition of the term "private activity bond" for facilities described in section 103(b)(4) (C) and (D) only applies if the property is owned by, or on behalf of, a governmental unit while all or any part of the issue or any refunding issue remains outstanding.

If all or a portion of the property is sold to a non-governmental entity for its fair market value and all of the proceeds from the sale (except for a de minimis amount less than \$5,000) are used within six months to redeem outstanding obligations, the obligations will not be treated as private entity bonds.

Q-11: What are the consequences if private activity bonds are issued to provide additions to a facility that was provided with obligations that were not private activity bonds when issued by virtue of the exception provided in section 103(n)(7)(C) and such additions are not treated as owned by a governmental unit?

A-11: In order to qualify for the exception to the definition of the term "private activity bond" for obligations described in section 103(b)(4) (C) or (D), all of the property described in section 103(b)(4) (C) or (D) that is part of the facility provided with the proceeds generally must be owned by, or on behalf of, a governmental unit. See A-9 of this § 1.103 (n)-2T. However, if the proceeds of an issue of private activity bonds are used to make additions to a facility (other than additions that are not considered to be part of the facility under A-9 of this § 1.103(n)-2T) that was provided with another issue of industrial development bonds that were not private activity bonds when issued by virtue of the exception provided in section 103(n)(7)(C), then the prior issue will not cease to qualify for that exception. Nevertheless, for purposes of determining the aggregate amount of private activity bonds issued during the year that the issue to provide the addition to the previously financed facility is issued, the portion of the prior issue

outstanding on the date of issue of the issue to provide the addition will be treated as part of the issue to provide the addition.

Example. The following example illustrates the provisions of A-11 of this § 1.103 (n)-2T:

Example. On March 1, 1986, City P issues a \$100 million issue of industrial development bonds to provide an airport, as described in section 103(b)(4)(D). City P uses substantially all of the proceeds to acquire land and to construct runways and a terminal on that land. No other property is constructed on the land. City P is the owner of the land and the terminal for Federal income tax purposes generally. Thus, the obligations comprising the March 1, 1986, issue are not private activity bonds when issued. On September 1, 1988, City P leases a portion of the land adjacent to the terminal to Corporation V (a non-governmental entity) under a true lease for Federal income tax purposes. City P's private activity bond limit for 1988 is \$100 million, and as of September 30, 1988, City P has not issued any private activity bond during 1988. On September 30, 1988, City P issues a \$20 million issue of industrial development bonds, the proceeds of which are to be used to construct a hotel that is functionally related and subordinate to the airport. The hotel is to be constructed on the land that P leased to Corporation V. The hotel will be owned by Corporation V for Federal income tax purposes generally. On September 30, 1988, the outstanding face amount of the March 1, 1986, issue is \$100 million. Although the obligations comprising the March 1, 1986, issue will not become private activity bonds as a result of the subsequent issue, on September 30, 1988, City P is treated as issuing a \$120 million issue of private activity bonds. Since that amount exceeds City P's private activity bond limit, the \$20 million issue of private activity bonds issued on September 30, 1988, does not meet the requirements of section 103(n). In addition, any subsequent issuance of private activity bonds by City P during 1988 will fail to meet the requirements of section 103(n). The March 1, 1986, issue continues to be described in section 103(a).

Q-12: Section 103(n)(7)(C)(iv) provides that the exception for certain facilities described in section 103(b)(4) (C) or (D) shall not apply in any case where the facility is leased under a lease that has significant front end loading of rental accruals or payments. What does "significant front end loading of rental accruals or payments" mean?

A-12: Where a lease requires rental payments that are significantly higher

in the early years of the lease than in later years, the lease calls for significant front end loading of rental accruals or payments. A lease that provides for flat rental payments during the entire lease term does not violate the prohibition against significant front end loading of rent. In addition, a lease may provide for adjustments in rent for inflation or deflation, provided that such adjustments are to be made on the basis of a generally recognized price index. In addition, a lease may provide that rental payments are to be determined, in whole or part, based on a percentage of income, production, etc., provided that the percentage rate is kept constant (or increases) over the term of the lease and that the threshold, if any, above which the percentage applies is kept constant (or decreases) over the term of the lease. Thus, for example, a lease that requires rental payments throughout the term of the lease of \$100,000 per year plus 5 percent of the gross income from the facility in excess of \$500,000 does not violate the prohibition against significant front end loading of rent.

Examples. The following examples illustrate the provisions of A-4 through A-12 of this § 1.103(n)-2T:

Example (1). On February 1, 1985, County Z issues obligations with a term of 30 years. Substantially all of the proceeds of the obligations are to be used to provide a trade show facility as described in section 103(b)(4)(C). Z leases the entire facility to Corporation S. For Federal income tax purposes generally, S is treated as the owner of the facility solely by reason of the length of the lease. The lease provides that the lessee will elect not to claim depreciation or an investment credit with respect to the facility and that S will provide Z with a copy of the election. S makes the election, retains it in its records, and provides County Z with a copy. The lease provides that neither the lessee nor any successor in interest will claim a deduction for depreciation or an investment credit with respect to such facility. The obligations are not private activity bonds on the date of issue, provided that the lease does not call for significant front end loading of rental accruals or payments.

Example (2). The facts are the same as in Example (1) except that on February 1, 1986, S assigns the lease to Corporation T. For its taxable year ending March 31, 1986, Corporation T claims depreciation with respect to the trade show facility. The obligations outstanding on the date Corporation T claims

depreciation on its Federal income tax return are treated as the last private activity bonds actually issued or treated as issued by County Z during 1986, and such obligations must comply with the requirements of section 103(n). In addition, Corporation T is not entitled to claim depreciation or an investment credit with respect to the trade show facility during the balance of the term of the lease and will be subject to the applicable penalties for so claiming depreciation.

Example (3). The facts are the same as in Example (1) except that the obligations are redeemed on January 31, 1998; on January 31, 1999, S assigns the lease to Corporation X; and on its Federal income tax return for calendar year 1999, Corporation X claims depreciation with respect to the facility. The obligations are not private activity bonds provided that the lease does not call for significant front end loading of rental accruals or payments. However, X is not entitled to claim depreciation or an investment credit with respect to the trade show facility during the balance of the term of the lease and will be subject to the applicable penalties for so claiming those items.

Q-13: To which obligations does the refunding obligation exception apply?

A-13: The term "private activity bond" does not include any refunding obligation to the extent specified in this A-13. The term "refunding obligation" means that is part of an issue of obligations the proceeds of which are used to pay any principal or interest on any other issue of obligations described in section 103(a) (referred to as the prior issue). The term "refunding obligation" does not include any obligations issued more than 180 days before the prior issue is discharged ("advance refundings"). The exception for refunding obligations only applies to the extent that the aggregate amount of the refunding issue does not exceed the outstanding face amount of the prior issue, or portion thereof, being refunded. Thus, for example, in the case of an obligation part of the proceeds of which are to be used to refund a prior issue of private activity bonds and part of the proceeds of which are to be used to provide a pollution control facility under section 103(b)(4)(F), those proceeds to be used to refund all or any part of the principal amount of the prior issue are not the proceeds of a private activity bond; the balance of the proceeds are the proceeds of a private activity bond. The refunding obligation exception does

not apply to obligations to the extent that amounts are used to pay the costs of issuing refunding obligations. If an issue of obligations consists of both obligations that qualify for the refunding obligation exception and private activity bonds that do not meet the requirements of section 103(n), the entire issue is treated as consisting of obligations not described in section 103(a).

Q-14: Does the refunding obligation exception apply to obligations issued to refund a prior issue of student loan bonds?

A-14: In the case of any student loan bond, the refunding obligation exception applies only if, in addition to the requirements stated in A-13 of this § 1.103(n)-2T, the maturity date of the funding obligation is not later than the later of (i) the maturity date of the obligation to be refunded, or (ii) the date 17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

Q-15: What is the "maturity date" of an obligation?

A-15: For purposes of section 103(n), the "maturity date" of an obligation is the date on which interest ceases to accrue and the obligation may either be paid or redeemed without penalty. The date is determined without regard to optional redemption dates (including those at the option of holders). If the issuer is required by the obligations or the indenture to redeem portions of obligations or to make payments of principal with respect to obligations in specified amounts and at specified times, such mandatory redemptions or payments shall be treated as separate obligations.

Q-16: Where private activity bonds are refunded with other obligations described in section 103(a), does the refunding obligation exception apply to the extent that the aggregate amount of the refunding obligations exceeds the outstanding principal amount of the prior issue due to the use of a portion of the proceeds of the refunding issue to fund a reasonably required reserve or replacement fund?

A-16: Whether the prior issue was issued prior to January 1, 1984, or

thereafter, the refunding obligation exception to the definition of the term "private activity bond" only applies to the extent that the aggregate amount of the refunding obligation does not exceed the outstanding principal amount of the prior issue. Thus, the additional obligations issued to provide for a reasonably required reserve or replacement fund are private activity bonds.

Q-17: What is a "student loan bond"?

A-17: The term "student loan bond" means an obligation that is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly to finance loans to individuals for educational expenses. For purposes of this A-17, the use of more than 25 percent of the proceeds of an issue of obligations to finance loans to individuals for educational expenses will constitute the use of a major portion of such proceeds in such manner.

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C.103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39316, Oct. 5, 1984]

§ 1.103(n)-3T Private activity bond limit (temporary).

Q-1: What is the "State ceiling"?

A-1: In general, the State ceiling applicable to each State and the District of Columbia for any calendar year prior to 1987 shall be the greater of \$200 million or an amount equal to \$150 multiplied by the State's (or the District of Columbia's) population. In the case of any territory or possession of the United States, the State ceiling for any calendar year prior to 1987 shall be an amount equal to \$150 multiplied by the population of such territory or possession. In the case of calendar years after 1986, the two preceding sentences shall be applied by substituting "\$100" for "\$150." In the case of any State that had an excess bond amount for 1983, the State ceiling for calendar year 1984 shall be the sum of the State ceiling determined under the general rule plus 50 percent of the excess bond amount for 1983. The excess bond amount for 1983 is the excess (if any) of (i) the aggregate amount of private activity bonds issued by issuing authorities in such State during the first 9 months of calendar year 1983 multiplied by $\frac{1}{3}$, over (ii) the State ceiling determined

under the general rule for 1984. For purposes of determining the State ceiling amount applicable to any any State for calendar year 1984, an issuer may rely upon the State ceiling amount published by the Treasury Department for such calendar year. However, an issuer may compute a different excess bond amount for 1983 where the issuer or the State in which the issuer is located has made a more accurate determination of the amount of private activity bonds issued by issuing authorities in the issuer's State during 1983. See A-7 of this §1.103(n)-3T for rules regarding a State containing constitutional home rule cities.

Q-2: What is the private activity bond limit for a State agency?

A-2: Under section 103(n)(2) the private activity bond limit for any agency of the State authorized to issue private activity bonds for any calendar year shall be 50 percent of the State ceiling for such year unless the State provides for a different allocation. For this purpose, the State is considered an agency. See, however, A-17 of this §1.103(n)-3T with respect to the penalty for failure to comply with the requirements of section 631(a)(3) of the Tax Reform Act of 1984.

Q-3: How is private activity bond limit determined where a State has more than one agency?

A-3: If any State has more than one agency (including the State) authorized to issue private activity bonds, all such agencies shall be treated as a single agency for purposes of determining the aggregate private activity bond limit available for all such agencies. Each of the State agencies is treated as having jurisdiction over the entire State. Therefore, under A-8 of this §1.103(n)-3T the aggregate private activity bond limit for all the State agencies is allocated to the State since it possesses the broadest sovereign powers of any of the State agencies. Each other State agency's private activity bond limit is zero until it is assigned part of the private activity bond limit of another governmental unit pursuant to these regulations.

Q-4: What is a State agency?

A-4: A State agency is an agency authorized by a State to issue private activity bonds on behalf of the State. In